IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 9776 of 2005

Between:

1 S. Narasimha Rao S/o. Narayana Rao, Date of Birth 1-6-1947
Vijayawada Thermal Power Station Ibrahimpatnam
Krishna Dist., A.P.
2 K.Mruthyunjaya Rao S/o.Narsing Rao, Date of Birth 6-7-1947
O/o.The Chief Engineer/Projects Vidyut Soudha
Khairtabad Hyderabad, A.P.
3 P. Murali Mohan S/o. R. Chengappa, Date of Birth 10-1-1948
Rayalaseema Thermal Power Station Kalamalla
Kadapa dist., A.P.
4 M.Venkateswara Rao S/o. Veerla Venkaiah, Date of Birth 20-2-1948
Vijayawada Thermal Power Station Ibrahimpatnam
Krishna Dist., A.P.
5 S. Govindu, Date of birth 15-7-1948, Addl. Asst. Engineer/Mechanic PABR Dam, PABR HES,

Ananthapur, A.P.
6 M. Satyanarayana S/o. Radha Krishna Rao, Date of Birth 15-8-1948
Addl. Asst. Engineer/Mechanic, Vijayawada Thermal Power Station
Ibrahimpatnam, Krishna Dist., A.P.
7 T. Satyanarayana S/o. Radha Krishna Rao, Date of Birth 19-7-1949
Addl. Asst. Engineer/Mechanic Vijayawada Thermal Power Station
Ibrahimpatnam, Krishna Dist., A.P.
8 V. Rama Rao S/o. Joga Rao, Date of Birth 20-10-1952
Addl. Asst. Engineer/Mechanic , Vijayawada Thermal Power Station
Ibrahimpatnam Krishna Dist., A.P.
9 P.V.Ramanaiah S/o. P. Subbarayudu, Date of Birth 14-1-51
Addl. Asst. Engineer/Mechanic ,Rayalaseema Thermal Power Station
Kalamalla Kadapa dist., A.P.

..... PETITIONERS

AND

The A.P. Power Generation Corporation Rep. by its Chairman
Vidyuth Soudha Hyderabad, A.P.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ order or direction more particularly one in the nature of the writ of mandamus declaring the action of the respondent in denying the promotions to the post of Asst. Divisional Engineer to the petitioners by misinterpreting the provision of ratio to the post of Asst. Divisional Engineer, as illegal, arbitrary besides being violation of Art.14,16,19 and 21 of the constitution of India and consequently direct the respondent to consider the cases of the Additional Assistant Engineers/Mechanics for promotion to the extent of qualified and suitable candidates available, against the vacancies in the cadre of Asst. Divisional Engineer/Mechanical, as long as there are no qualified and suitable candidates amount Asst. Engineer without reference to the quota of Assistant Engineers/Mechanics and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. G. MUKUNDA REDDY

Counsel for the Respondent No.: Smt. E. URMILA

The Court made the following :

O R D E R:

This writ petition is filed seeking a mandamus declaring the action of the respondent in denying the promotions to the petitioners from the post of Additional Assistant Engineer/Mechanical to the post of Assistant Divisional Engineer by misinterpreting the provision of ratio, as illegal and arbitrary.

The case of the petitioners in a nutshell is that the respondent herein is a body incorporated under Electricity Reforms Act and is the successor of the erstwhile Andhra Pradesh State Electricity Board (A.P.S.E.B.) and the employees of the erstwhile APSEB have been allotted to the respondent based on the options exercised by the individuals and their seniority under A.P.Genco has been fixed cadre-wise as on 1.9.2002. The services of employees of the A.P. Genco., are governed by the APSEB Service Regulations part-I, II and III as per the 2nd transfer rules issued by the Government of Andhra Pradesh as agreed to in the tripartite agreement entered into between the Government of A.P., the APSEB and the Employees Unions operating in the APSEB. The petitioners have been recruited by transfer consequent on withdrawing the direct recruitment provision to the post of Additional Assistant Engineer, after a prolonged service ranging from 15 to 18 years of service below the cadre of Additional Assistant Engineer. In fact, the vacancies in the cadre of Assistant Divisional Engineer shall be shared in the ratio of 1:3:1 between the Meritorious Assistant Engineers by way of limited recruitment and by promotion of Assistant Engineers in the order of seniority and by promotion of Additional Assistant Engineers in the order of seniority, respectively, as per the amendment carried out vide B.P.Ms.No.82 dated 17.5.1993. At the end of 2003, there were as many as 50 vacancies of Assistant Divisional Engineer/Mechanical and the respondent-corporation called for the Annual appraisal reports and confidential reports of the individuals from the field for consideration for promotion to the post of Assistant Divisional Engineer in the month of February 2004 and on receipt of the same, the respondent-corporation did not choose to finalize the process for promotion. It is further contemplated by the regulation that only sharing of the vacancies by different groups of employees eligible for promotion to the post of Assistant Divisional Engineer/Mechanical irrespective of the condition whether candidates, qualified for promotion in any of the groups, are available or not. When the candidates in one group are not available, the question of sharing of the vacancies does not arise and the qualified and eligible candidates without reference to the group to which they belong shall fill up the posts. But the respondent company is misinterpreting the regulation provision and denied the legitimate right of promotion to the petitioners in spite of the fact that they are fully qualified for promotion. The reason for causing promotions to the post of Assistant

Divisional Engineer/Electrical/Mechanical being shown by the respondent is quite contrary to their own interpretation given to the rule of ratio in vogue. The petitioners pleaded that they are deprived of the opportunity of promotion before retirement by misinterpretation of the regulation provision, contrary to the interpretation given and adopted all along, more particularly when the petitioners' turn came. The interpretation to the ratio of promotion given and followed by the respondent-corporation is highly arbitrary, illegal and violation of the constitutional safe guards. Hence, the petitioners pray to direct the respondent to promote the petitioners as Assistant Divisional Engineers to the extent of the share of the Additional Assistant Engineers.

On the other hand, the respondent company filed counter affidavit, *inter alia* contending that the employees of erstwhile APSEB had been allotted to the respondent- corporation basing on the options exercised by them and their seniority under A.P.GENCO., had been fixed with effect from 17.08.2002, cadre-wise as assigned by A.P.TRANSCO. According to Annexure-I referred to in Regulation 6(a) of APSEB-SRs Part-III, as adopted, the method of recruitment to the category of Assistant Divisional Engineer in various branches in Engineering Service is by way of limited recruitment and by promotion from among the full members of approved probationers in the category of AEs/AAEs/DM Grade-I. The first vacancy shall be filled up by the candidate selected through the limited recruitment, the next three by promotion from the AEs and 5th by promotion from AAEs and DM Grade-I. Annexure-III referred to in Regulation 14 of APSEB-SRs, Part-III shows the qualifications required for the disputed category of posts. The contention of the petitioners that the promotions to the cadre of ADE/Mechanical are being considered on group-wise is not correct. It is further contended that in terms of Regulation-54 of APSEB Service Regulations Part-I, as adopted, the Board can appoint an employee to hold substantially as a temporary measure due to administrative convenience and that it is a fact that the A.P.GENCO is following the APSEB Service Regulations as adopted to its employees. Hence the contention of the petitioners that the A.P.GENCO is giving different interpretation to the ratio of promotion to the post of ADE is not correct. The filling up of ADE vacancies by promotion between AEs and AAEs are being considered as per the provisions

contemplated in the regulations duly following the Rule of Reservation. There are absolutely no deviations from the regulations in the promotions. Hence, pray for dismissal of the Writ Petition.

The learned counsel for the petitioners contended that there is practice existing in the respondent-corporation right from the year 1989, whenever there were no candidates eligible for promotion as Assistant Divisional Engineers from the cadres of merit candidates of Assistant Engineers and Additional Assistant Engineers and therefore, the case of the petitioners may be considered on the analogy which the respondent-corporation is following as per the Board Proceedings issued from time to time.

On the other hand, the learned standing counsel for the respondent-corporation contended that filling up of the Assistant Divisional Engineers by promotion between the Assistant Engineers and Additional Assistant Engineers are being considered as per the provisions contemplated in Regulations duly following the reservations and as per the regulation 6(a) of APSEB Regulations Part-III, the vacancies by promotion has to be filled in 1:3:1 and hence the petitioners cannot claim promotion as a matter of right and therefore, the petition deserves to be dismissed.

It is not disputed before this Court that promotion to the post of Assistant Divisional Engineers shall be made in accordance with the Regulation 6(a) read with Regulation 14 of APSEB Service Regulations Part-III. According to the said regulation, the filling of vacancies by promotion between the Assistant Engineers and Additional Assistant Engineers shall be in the ratio of 1:3:1 duly following the Rule of Reservation. The inter-se-seniority in the cadre of ADE shall be in the same order of merit drawn as recommended by the DPC. The petitioners in their affidavit have given the specific instances, when there was no either Assistant Engineers of Mechanical group or civil group, eligible for promotion as an Assistant Divisional Engineer, the members belonging to the Additional Assistant Engineers are being considered for promotion. Those instances have been noted as follows:

a. Vide B.P.Ms.No.214 dt.7.3.1989 10-AEEs Civil have been promoted as ADE/Civil, when there were no Assistant Engineers/Civil, eligible for being considered for promotion as ADE/Civil.

b. Vide B.P.Ms.No.1162 dt. 3.11.1989, 3-Assistant Engineer Civil and 17 Additional Assistant Engineers/Civil have been promoted as Assistant Divisional Engineer Civil, when there were no Assistant Engineers/Civil, eligible for being considered for promotion as ADE/Civil.

c. Vide B.P.Ms.No.223 dt. 3.8.1991, 19-Assistant Engineer Civil and 26 Additional Assistant Engineers/Civil have been promoted as Assistant Divisional Engineer Civil, when there were no Assistant Engineers/Civil, eligible for being considered for promotion as ADE/Civil.

d. Vide B.P.Ms.No.194 dt.12.8.1994, 24-Assistant Engineer /Civil and 8 Additional Assistant Engineers/Civil have been promoted as Assistant Divisional Engineer Civil, when there were no Assistant Engineers/Civil, eligible for being considered for promotion as ADE/Civil.

e. Vide B.P.Ms.No.392 dt.4.3.1997, 12-AAEs Civil have been promoted as ADE/Civil, when there were no Assistant Engineers/Civil, eligible for being considered for promotion as ADE/Civil.

f. Vide B.P.Rt.No.345 dt.21.11.1995 3-AEs Mechanical and 10-AAEs/Mechanical, have been promoted as ADE/Mechanical, when there were no Assistant Engineers/Mechanical eligible for being considered for promotion as ADE/Mech.

g. Vide Memo No.GM(Adm)/DS(P)/C.2-174/2002 dt.8.2.2002, 2-AAEs/Mechanical have been promoted as ADE/Mechanical., when there were no AE/Mechanical eligible for promotion as ADE/Mech.

h. Vide Memo No.GM(Adm)/DS(P)/AS(P)/C.2-174/2002 dt.1.4.2002, 5-AAEs/Mechanical have been promoted as ADE/Mechanical, when there were no AE/Mechanical eligible for promotion as ADE/Mech.

i. Vide GOO.No.774/GM(Adm)2002 dt.10.3.2003, 6-AAE/Mechanical have been promoted as ADE/Mechanical, when there were no AE/Mechanical eligible for promotion as ADE/Mech.

j. Vide GOO.No.186/GM(Adm)/2003 dt.17.6.2003, 10-AAEs/Mechanical have been promoted as ADE/Mechanical, when there were no AE/Mechanical eligible for promotion as ADE/Mech.

k. Vide GOO.No.544/GM(Adm)/2003 dt.20.12.2003, 4-AAEs/Mechanical have been promoted as ADE/Mechanical, when there were no AE/Mechanical eligible for promotion as ADE/Mech.

In reply to this specific pleading, the respondent-corporation stated that as per the terms of Regulation-54 of APSEB Service Regulations, Part-I, the respondent-corporation can appoint employee to hold substantially as on temporary measure due to administrative convenience. The copies of the proceedings in giving promotions have been filed along with the representation. The copies would clearly go to show that the persons therein were promoted temporarily. Having allowed some persons for promotion as Assistant Divisional Engineers from the cadre of Additional Assistant Engineer, if the same benefit is not extended to the Writ Petitioners, then certainly it is discrimination. The case of the petitioners stands on par with the persons who are already promoted as Assistant Divisional Engineers from the cadre of Additional Assistant Engineers.

Therefore, the Writ Petition is allowed, directing the respondent-corporation to consider the case of the petitioners for promotion, if they are otherwise qualified and eligible for promotion, as Assistant Divisional Engineers on the same analogy under which some Additional Assistant Engineers were given promotions in the year 1989, 1991, 1994, 1995, 1997, 2002 and 2003. The respondent-corporation shall take appropriate decision before the end of this month.

Justice K.C.BHANU

6th July 2005.

BCS

Note: Issue C.C. by tomorrow.

B/o

BCS

.ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1) The Chairman, A.P. Power Generation Corporation Vidyuth Soudha Hyderabad, A.P.

2) 2 CD copies